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Report of the Working Group of Experts on People of African Descent on its mission to Germany

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Germany from 20 to 27 February 2017. In the report, the Working Group presents the current legal, institutional and policy framework and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Germany, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Germany*

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* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government of Germany, the Working Group of Experts on People of African Descent undertook a visit to Germany from 20 to 27 February 2017. The members of the delegation were Ricardo A. Sunga III (Chairperson), Mireille Fanon Mendès-France and Sabelo Gumedze (members of the Working Group).

2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Germany, and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance they face. The Working Group studied the official measures taken and mechanisms intended to prevent structural racial discrimination and protect victims of racism, as well as responses to multiple forms of discrimination according to the concept of intersectionality. The Working Group visited Berlin, Cologne, Dessau, Dresden, Düsseldorf, Frankfurt am Main, Hamburg and Wiesbaden.

3. The Working Group met representatives of several federal government ministries in Berlin, including the Foreign Office and the ministries of environment, family affairs, health, interior, justice and labour. It met representatives of the Federal Anti-Discrimination Agency, the Federal Office for Migration and Refugees and the Office of the Federal Commissioner for Migration, Refugees and Integration, as well as officials of the Federal Statistical Office and the National Agency for the Prevention of Torture, Wiesbaden. The Working Group also spoke to a member of parliament.

4. The Working Group met representatives of the Berlin State Office for Equal Treatment and Against Discrimination, the Commissioner of the Berlin Senate for Integration and Migration and the Berlin Police. The Working Group also visited the Plötzensee Juvenile Detention Centre in Berlin. In Dessau, it met officials of the Police Directorate of Saxony-Anhalt East, the public prosecutor-general of Saxony-Anhalt and officials working on integration programmes. In Dresden, the Working Group met officials of the State Chancellery of the State of Saxony and officials of the state ministries of social affairs and justice. In Frankfurt am Main, the Working Group met with the officials of the Anti-Discrimination Centre at the Office for Multicultural Affairs of the City of Frankfurt am Main, and Federal Police officials at the city's airport. In Düsseldorf, the Working Group met officials of the State of North Rhine-Westphalia and officials working in the areas of anti-discrimination, education, refugee affairs and integration. In Cologne, the Working Group met representatives of the Cologne Police. In all the cities that the Working Group visited, it also met a considerable number of Germans of African descent, as well as human rights activists, lawyers, academics and representatives of non-governmental organizations.

5. The Working Group thanks the Government for its invitation and the authorities in Berlin, Saxony-Anhalt, Saxony, Hesse, North Rhine-Westphalia and Hamburg for their support and cooperation during the visit. In particular, the Working Group thanks the Federal Foreign Office. The Working Group would also like to express its appreciation to the German Institute for Human Rights for its engagement and support. The Working Group warmly thanks the civil society steering committee led by the Kaneza Initiative for coordinating meetings with civil society in various parts of the country, and appreciates the feedback from all the people who shared their views on the human rights situation of people of African descent in the country.

II. Background: historical overview

6. The history of people of African descent in Germany goes back to the late seventeenth century. Enslaved Africans were uprooted from West Africa and brought to

Hamburg in ships in 1682.[1] Slavery was abolished by the late eighteenth century, and a unified German nation was established in 1871. In 1877, Nubians from the Sudan and Egypt were exhibited in Berlin and several other cities in Europe, perpetuating racial stereotypes.[2]

7. Germany's crimes against Africans and people of African descent are overshadowed by the country's focus on other parts of its history. The Berlin Africa conference in 1884, a meeting at which the major European powers negotiated and formalized claims to territory in Africa, had a devastating and lasting impact on the continent of Africa. The Ovaherero and Nama peoples were the primary victims of the 1904-1908 genocide in South-West Africa (now Namibia) by the German colonial authorities. Various historical accounts estimate that over 65,000 Ovaherero and 10,000 Nama were killed by the German authorities, including thousands who died of starvation and thirst after being driven into the desert without food or water. Many Ovaherero and Nama who survived the initial slaughter of their people died in the notorious concentration camps;[3] they were decapitated and their skulls were then sent to Germany at the request of medical researchers to help prove the racial superiority of white people over black people.[4]

8. The suffering of the Ovaherero and Nama peoples at the hands of the German authorities, also known as the "first genocide of the twentieth century",[5] has left an indelible mark on the souls of both victims and perpetrators. The colonial past of Germany, the genocide of the Ovaherero and Nama peoples and the sterilization, incarceration and murder of people of African descent under the Nazi regime in Germany are not addressed in the national narrative.

9. The presence of French African troops in the Rhineland following the First World War and of African-American soldiers in Germany following the Second World War both led to the birth of children of mixed race, who were also subjected to racial discrimination.

10. People of African descent in Germany informed the Working Group that they found the existence of street names and metro stations such as "Mohrenstrasse"[6] to be racist and insulting. Other street names still glorify personalities who played a key role in colonizing, enslaving and exploiting African people. Such naming of streets and metro stations indicates the persistence of structural racism and minimizes the crimes committed during the colonial period. The Working Group notes the positive change to one street name in Berlin, where the name of a colonialist was replaced by the name of a German woman of African descent, poet, educator, author, and activist May Ayim, following the mobilization of Afro-German civil society organizations.

11. According to Government estimates, there are some eight hundred thousand people of African descent in Germany (1 per cent of the population). This figure is based on the

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[1] Paulette Reed-Anderson, *Rewriting the Footnotes — Berlin and the African Diaspora* (Berlin, Ausländerbeauftragte des Senats, 2000), p. 8.

[2] Anne Dreesbach, "Colonial exhibitions, 'Völkerschauen' and the display of the 'other'", 3 May 2012. Available from http://ieg-ego.eu/en/threads/models-and-stereotypes/the-wild-and-the-civilized/anne-dreesbach-colonial-exhibitions-voelkerschauen-and-the-display-of-the-other.

[3] See E/CN.4/Sub.2/1985/6, p. 9. See also P. Fraenkel, *The Namibians* (London, Minority Rights Group, 1985); C.W. Erichsen, *"The Angel of Death has Descended Violently Among Them": Concentration Camps and Prisoners-of-War in Namibia, 1904-08* (Leiden, African Studies Centre, 2005). Available from https://openaccess.leidenuniv.nl/handle/1887/4646.

[4] N. Stafford, "German medical schools respond to claim they have stored Namibian skulls from colonial times", *British Medical Journal*, vol. 337 (2008); J. Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (Cape Town, University of Cape Town Press, 2011).

[5] George Steinmetz, "The first genocide of the 20th century and its postcolonial afterlives: Germany and the Namibian Ovaherero", *Journal of the International Institute*, vol. 12, No. 2 (2005). See also H. Melber, "Uncovering the 20th century's first genocide", *New African*, vol. 3, pp. 26-30. Available from https://www.researchgate.net/profile/Henning_Melber/publication/316167122_Uncovering_the_20th_century_first_genocide/links/58f49d96aca27289c21c8bf1/Uncovering-the-20th-century-first-genocide.

[6] German *Mohr*: Moor — an archaic term for a person of African descent, now considered offensive.

figure of six hundred thousand people recorded in official statistics as having foreign-born parents (second generation) or refugees or migrants with African nationality. Another 200,000 people have been added as an estimate of the number of German citizens who are of African descent but do not appear in the official statistics. Civil society sources estimate that the number of people of African descent in Germany is around 1 million. The use of the term "African migration background" does not account adequately for all people of African descent living in Germany. If the parents were born (in Germany) as foreigners, the third generation is covered by the definition "migrant background". The third generation cannot, however, be identified as being of African descent if the parents (second generation) were born as German citizens.[7] Civil society sources reported that the focus on African citizenship also rendered invisible the significant presence of members of the African diaspora from Brazil, France, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Caribbean and elsewhere. For historical reasons, the Government does not gather data or official statistics based on ethnicity or race; however, people of African descent are calling for equality data to be gathered, on the basis of self-identification, as an important step in addressing the racism they face. Social science research does include disaggregated data showing racial and ethnic background.

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

12. Germany has ratified all the major international human rights treaties, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

13. The protection of human rights and the prohibition of racial discrimination are enshrined in the German Basic Law (inter alia articles 1 and 3). Article 3 of the Basic Law declares that all persons shall be equal before the law and that no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. It further declares that no person shall be disfavoured because of disability.

14. Protection is also guaranteed under the General Equal Treatment Act (2006), which governs claims and legal consequences in the case of discrimination in private contracts. Section 1 of the Act states that its purpose is to prevent or stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The Act also addresses the question of affirmative action in its section 5, entitled "Positive Action", which provides that unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under section 1. An important outcome of the General Equal Treatment Act was the creation of the independent Federal Anti-Discrimination Agency, which is administratively part of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

15. The Working Group was informed that, while the federal structure of Germany has the virtue of allowing states to explore more progressive policies to protect and promote the rights of people of African descent, the autonomy of the states and of local government means that state laws may vary, and thus that people of African descent may enjoy different levels of protection of their rights, depending on the state in which they live. The Working Group did not receive any information about whether state parliaments deliberate and consider human rights obligations and recommendations emanating from international mechanisms.

[7] The group of people with a migration background consists of all persons who were born as foreigners or who have at least one parent who was born as a foreigner.

B. Institutional and policy measures

16. The Basic Law guarantees equality, prohibits racial discrimination and states that human dignity is inviolable. It is directly applied by German courts. Any person may file a constitutional complaint to the Constitutional Court, alleging that one of his or her basic rights or rights under article 20 (4) or articles 33, 38, 101, 103 or 104 of the Basic Law has been infringed by public authority (article 93 (4) (1) (4) (a) of the Basic Law). The Basic Law can, in principle, be invoked in court against public authorities. In practice, however, administrative courts only infrequently address Afrophobia and racial discrimination through the Basic Law.[8] The authorities informed the Working Group that this was because the application of federal or state law was sufficient to resolve the case in accordance with the Basic Law. Compensation cannot be obtained through the proceedings that address racial discrimination, which concern all kinds of claims for compensation against the state concerned.

17. In 2015, the Federal Ministry of Justice and Consumer Protection set up a task force on dealing with hate speech on the Internet in a sustainable and effective way, while also enhancing and expanding the various areas in which the task force members were already cooperating. The invitation to join the task force was accepted by Facebook, Google (for its video platform YouTube) and Twitter and by several civil society organizations.

18. The Working Group was informed about data on hate crimes collected by the Federal Ministry of the Interior, which include data on racism and racial violence. The data are disaggregated under four categories of politically motivated crime: right-wing politically motivated crimes, left-wing politically motivated crimes, politically motivated crimes of foreign ideology, and other politically motivated crimes. The Working Group learned that these categories include acts directed against a person because of his or her political opinion, nationality, ethnicity, race, skin colour, religion, belief, origin, disability, sexual orientation, outward appearance or social status. While the data show a steady increase in incidents of racism and racial violence, it is difficult to rely on these data alone, as they do not include cases in which the perpetrators are not politically motivated or have no organizational affiliation.

19. The scope of the General Equal Treatment Act is too narrow. It does not cover structural racism or racial discrimination committed by the State. It applies to civil law only. Accordingly, it excludes a wide array of racial discrimination committed by the State, such as racial profiling by the police or police violence against people of African descent. This limitation lessens the legal recourse available to people of African descent, particularly through the Federal Anti-Discrimination Agency established by the General Equal Treatment Act. The main mandate of the Federal Anti-Discrimination Agency is to receive complaints of discrimination on any of the grounds laid down in the General Equal Treatment Act. The Agency is then mandated to give independent assistance to complainants, by providing information on claims and possible legal action, arranging for advice to be provided by another authority and endeavouring to achieve an out-of-court settlement. The Agency therefore does not work as a complaint mechanism, as it is not empowered to bring about formal discrimination complaints against persons or institutions thought to have engaged in discriminatory behaviour.[9]

20. In 2015, an important amendment to article 46 of the German Criminal Code resulted in the courts, when determining a sentence, considering any racist, xenophobic or other inhuman motive as an aggravating circumstance. The Guidelines for Criminal Proceedings and Proceedngs to Impose a Regulatory Fine are supplementary administrative regulations for criminal proceedings and regulatory fines in Germany. The words "racist, xenophobic or other inhuman motives" have been inserted into numbers 15, 86 and 234 of those Guidelnes (corresponding to the new version of section 46 (2) of the German Criminal Code). Thus, Guideline No. 15 now explicitly stipulates that an

[8] See CERD/C/DEU/CO/19-22, para. 8.

[9] See A/HRC/14/43/Add.2, para. 20.

investigation must ascertain whether these motives were involved, as they constitute special circumstances for determining the legal consequences of an act.

21. Several initiatives are being undertaken at the federal and state levels to combat racism, racial discrimination, xenophobia and related intolerance. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Agency for Civic Education[10] have initiated pilot projects addressing group-related hate at the federal, state and local levels. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth started the federal programme "Live Democracy!" in 2015 (running until the end of 2019) with a budget of €104.5 million in 2017. As one part of this programme, 27 out of 96 pilot projects (dealing in general with selected phenomena of group-related hate and approaches to strengthening democracy in rural areas) were aimed specifically at the prevention of racism, including cooperation with civil society organizations, and some specifically in partnership with organizations working on the prevention of racism and empowerment of people of African descent. Additionally, "Live Democracy!" funds the structural development of a nationwide non-governmental organization (NGO) in the field of prevention of racism and empowerment of people of African descent. The Federal Agency for Civic Education has focused its efforts on young people, students, teachers and multipliers, inter alia through publications, workshops and online dossiers on combating racism. It offers additional knowledge and information materials about and for refugees. The Agency and two of its integrated operations ("Alliance for Democracy and Tolerance" and "Unity through Participation Programme") are encouraging communities, social organizations, sports clubs, schools and volunteers to fight extremism in a peaceful way and strengthen social engagement. The Agency cited the need to produce more multilingual products and more possibilities for people who have come from other countries to participate in such government work.

22. In developing the new National Action Plan against Racism, the Government consulted various NGOs, including the Forum against Racism and civil society organizations working for the rights of people of African descent. The Working Group was informed that the National Action Plan was formally unveiled by the Government on 14 June 2017, subsequent to the visit of the Working Group. This is a welcome development in relation to previous United Nations recommendations calling for such an action plan. The National Action Plan explicitly refers to increased efforts by Government in the fight against racial discrimination and the recognition of people of African descent, in view of the proclamation of the International Decade for People of African Descent. The National Action Plan also includes measures in the field of political education and research as well as awareness-raising in relation to the colonial past.

23. At the state level, the Berlin State Office for Equal Treatment and Against Discrimination has taken the lead in initiatives to combat racial discrimination and has joined the European Cities Against Racism project. The State of Berlin is pursuing the development of the Local Action Plan against Racism and Ethnic Discrimination. The Government informed the Working Group that, unfortunately, the process had failed because of a lack of financial resources. The Anti-Discrimination Centre in Frankfurt am Main receives individual complaints, including complaints of incidents of racial discrimination allegedly perpetrated by the authorities, through its hotline services.

24. The German Institute for Human Rights is an independent national human rights institution. It is accredited under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) with an "A" status. The Institute's tasks include policy advice, human rights education, information and documentation, applied research into human rights issues and cooperation with international organizations. The Institute produces advisory reports to the Government and the parliament, but does not handle individual complaints.

[10] In Germany, education is the responsibility of the states. The Federal Agency for Civic Education, under the Ministry of the Interior, deals only with the promotion among citizens of understanding of political issues, awareness of democracy and willingness to participate in political processes. See www.bpb.de/die-bpb/138852/federal-agency-for-civic-education.

IV. Manifestations of racial discrimination

A. Criminal justice system, representation, negative stereotypes and media

25. The Working Group found that racial profiling by police officials is endemic. Civil society sources reported that stops, identification checks, searches and other controls by police are usually targeted at minority groups, including people of African descent. Boys and young men experience day-to-day confrontation with law enforcement officials, with a high risk of imprisonment. The Government informed the Working Group that cases of racial profiling (defined as unjustified targeting of people by police measures only or mainly because of their race, ethnicity, etc.) were being investigated and prosecuted. However, the lack of an independent complaint mechanism at the federal level fosters impunity, with no redress for victims. The Government informed the Working Group that independent complaint mechanisms existed at the state level in some states. However, while mechanisms may exist in some states, the lack of information about them hinders access to these mechanisms. During its visit the Working Group heard testimonies about, and civil society organizations continue to report, discriminatory identity checks by police on members of ethnic and religious minorities.[11]

26. Under section 22 (1) (a) of the Federal Police Act, for the purpose of controlling immigration the Federal Police may stop, question and demand identity documents from, and inspect objects in the possession of, any person in railway stations, trains and airports.[12] The practice results in "unchangeable external characteristics" serving as a criterion that triggers suspicion, and thus race becomes a selection criterion for carrying out checks.[13]

27. Civil society sources in Berlin reported that a state law enables state police to classify certain areas as "dangerous places", thereby establishing a spatial zone where stop-and-search identity checks are allowed, even if the individual concerned has not given cause for suspicion, and infringing upon freedom of movement. These are often areas where large numbers of racialized people, including people of African descent, work and live.

28. The Working Group is particularly concerned by the failure by the State, in particular by the police, to investigate effectively and provide justice in cases of racial discrimination and violence against people of African descent. One example is the case of Oury Jalloh, an African asylum seeker, who died in a fire in a police cell in Dessau in 2005 while his hands and feet were cuffed. There are concerns about racial bias in his arrest, ill-treatment by the police, the use of physical restraint and gaps in the investigation into the cause of his death. The case was examined by the courts and a criminal trial ended with a minor conviction. There has been no independent inquiry, and the length of time that has elapsed without a conclusive decision has added further doubt about accountability measures in the criminal justice system. The Working Group believes that institutional racism and racist stereotyping by the criminal justice system has led to a failure to investigate and prosecute perpetrators effectively. The Working Group is also concerned about harassment of human rights defenders who are trying to seek truth and justice in this case.

29. The Working Group was also informed about other cases: Ousman Sey, who died in police custody in 2012 in Dortmund; Christy Schwundeck, who was shot by police in a job centre in Frankfurt am Main in 2011; Slieman Hamade, who died while he was being arrested and restrained in Berlin in 2010; Maria El-Sherbini, a young North African woman, who was stabbed to death in the high court in Dresden in front of her 3-year-old

[11] Amnesty International, *Amnesty International Report 2016/17: The State of the World's Human Rights* (London, 2017), pp. 166-168.

[12] See parallel report by the German Institute for Human Rights to the Committee on the Elimination of Racial Discrimination in the context of the latter's examination of the combined nineteenth to twenty-second periodic reports of Germany. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fDEU%2f20058&Lang=en.

[13] Ibid., p. 11.

son and the judge in June 2009; Mohammed Sillah, who died in custody in Remscheid (North Rhine-Westphalia) in 2007; Dominique Koumadio, who was shot and killed by law enforcement officials in Dortmund in 2006; Laye-Alama Condé, who died in custody in Bremen in 2004; Achidi John, who died in judicial custody after being detained in 2001 in Bremen; Amir Ageeb, who died while being deported from Frankfurt am Main in 1999; and N'deye Mariame Sarr, who was shot by police officers when she went to pick up her child from her white ex-husband in 2001. This list of incidents, albeit non-exhaustive, provides indicative examples of serious human rights violations, excessive use of force by law enforcement officials and impunity.

30. The Working Group was also concerned by the failure to protect people of African descent from hate crimes. The Working Group learned that people of African descent are frequently targeted and attacked by right-wing extremists.

31. The Working Group was also concerned by the reported degradation, humiliation and discriminatory treatment faced by young asylum seekers of African descent during the forced medical determination of age by the authorities while they are in pretrial detention. The Working Group heard from several young people in the Plötzensee Juvenile Detention Centre that, even though they had passports and birth certificates, they were forced into shackles, taken from the detention centre to the hospital and forced to remove all clothing and undergo an X-ray examination. They were not provided with any information or the result of the examination. These tests cannot be said to be 100 per cent accurate and are conducted without the young people's consent. Another concern was the lack of access to legal aid. The Working Group learned that, at a youth detention centre, meals are served only once a day, thus depriving detainees of breakfast in the morning and dinner in the evening. This practice is followed without the young people's consent and without taking into account their best interests.

32. Civil society sources reported that youth protection services were often prejudiced towards people of African descent, some of whom were forced to give up custody of their children on very weak assumptions. In many instances, young children are arbitrarily sent to State-run group homes, which often results in traumatization, tearing apart of family structures and estrangement of families. Families are then given very restricted access to their children, which perpetuates the traumatization. In addition, children of African descent left in State-run centres suffer from everyday racism.

33. The European Commission against Racism and Intolerance, in its monitoring report on Germany, pointed out the high rate of underreporting of offences involving racism, reflecting a lack of confidence on the part of vulnerable groups in the effectiveness of criminal proceedings brought by the police and the prosecution services. It added that a racist motivation was recognized in only a small number of judgments.[14] Both the German Institute for Human Rights and the European Commission against Racism and Intolerance regard the failure to solve the racially motivated murders and attacks perpetrated from 1998 to 2007 by the Nationalist Socialist Underground and documented by committees of inquiry as an indicator of systemic shortcomings in the handling of racially motivated crimes in Germany.

34. The Working Group was concerned by the lack of representation of people of African descent in law enforcement. For example, the Cologne Police informed the Working Group that there was only one person of African descent in its police force of 4,800, and readily acknowledged the need to increase diversity.

35. The federal parliament currently has two members of African descent, and there are some elected officials of African descent at the state and community levels across Germany. The lack of representation of people of African descent in government and politics means that their issues are not taken up in national political dialogue.

36. Civil society sources reported that some mass media encouraged stereotyping of people of African descent, with minimal reporting on the positive contributions that the

[14] European Commission against Racism and Intolerance, *ECRI Report on Germany* (Strasbourg, 25 February 2014), p. 9.

latter have made in various spheres — not only in sports and entertainment. At the same time, civil society sources also called for greater sensitivity in the mass media on issues of discrimination and racism. They called for more publicity about the injustices of exclusion instead of sensationalized stories, and for more promotion of the need for equal opportunity in society, with a recognition of people of African descent as a distinct group of people who are especially susceptible to racism and discrimination.

B. Disparities in access to education, health, housing and employment

37. People of African descent also face racial discrimination in the area of economic, social and cultural rights. However, data specific to people of African descent without a migrant background are not readily available. Data provided by the Federal Statistical Office showed that a high percentage (44.3 per cent) of "people of African descent with migrant background" were at risk of poverty, which is nearly three times the national mean of 15.7 per cent. Their monthly net income (€1,456) was almost 25 per cent less than the national mean monthly net income (€1,921).[15]

38. The Working Group is concerned about the educational outcomes of children of African descent in Germany. According to civil society sources, children of African descent are increasingly recommended by teachers to follow educational paths that reduce their opportunities for higher education. In the past, Germany had a three-tier education system. After primary school, students attended either the highest level of school, which prepared students for university studies, the intermediate level of school or the lowest level of school, which prepared children for work or vocational training. Reform initiatives were undertaken and implemented in several states, according to the specific requirements of each state, resulting in a more diversified system. However, equal opportunity, including equal access to higher education and professional training, has still not been achieved, even in the new types of school.[16] The Working Group noted the disproportionate dropout rate in schools, with learners from migrant backgrounds being twice as likely to drop out as those not from a migrant background.

39. The historical facts concerning the period of colonization, the transatlantic trade in Africans, enslavement and the genocide of the Ovaherero and the Nama peoples are not sufficiently covered in all schools. The curricula in some states fail adequately to address the root causes of racial inequality and injustice. This has also contributed to the structural invisibility of people of African descent in Germany.

40. Civil society sources reported the lack of teachers of African descent compared with the increasing numbers of students of African descent in schools. Similarly, reports were received about the lack of recognition and accreditation of university degrees obtained in African countries, which meant that people of African descent were compelled to take up jobs at a lower level than their academic qualifications warranted. Failing to get the necessary permits, or getting only partial information about the duration of the permit, means that the potential employee cannot access some contractual employment.

41. While the Basic Law guarantees respect for the human dignity of all, undocumented migrants face numerous legal and practical obstacles in upholding their human rights in Germany. The Working Group was informed that undocumented workers were at high risk of exploitation and that, if undocumented migrants went to school or to a hospital, they risked being found out and deported.

42. People of African descent continue to be underrepresented in management positions and they are often on the lowest rungs of Germany society. They end up with the jobs

[15] Further information available from http://www.destatis.de/.

[16] Academic Democratic and Forum Menschenrechte, "Racial discrimination in Germany: manifestations and human rights obligations to protect individuals and groups against racial discrimination" (parallel report submitted to the Committee on the Elimination of Racial Discrimination in the context of the latter's examination of the combined nineteenth to twenty-second periodic reports of Germany) (Berlin, 2015), p. 37.

which nobody else wants. Civil society sources reported that racial discrimination on the job market began when employers lost interest upon reading a foreign name, making it very difficult to get into formal employment, despite the individual's (certified) qualifications. Civil society sources reported instances of differential treatment faced by people of African descent, with disproportionately lower remuneration for work done in comparison with others. People of African descent are driven into poverty, which forces them into depression and brings a serious risk of mental health issues. Civil society sources also reported experiences of racial discrimination by medical doctors or nurses against patients, with stereotypical inferences being drawn from the patient's complaints.

43. The Working Group is concerned about discrimination in the form of decision-making by property owners on the basis of an individual's name and appearance.[17] Competition for rented housing among low-earning and middle-income families has given considerable latitude to property owners in selecting their tenants. The Working Group noted that, under section 19 (3) of the General Equal Treatment Act, property owners can refuse to rent apartments to persons applying for accommodation, with a view to creating and maintaining socially stable residential structures, balanced housing estates or balanced economic, social and cultural conditions.

44. Civil society sources reported that demographic change, reurbanization and a policy of keeping interest rates low aggravate the situation in the already tense housing markets of large cities, such as Berlin or Hamburg, narrowing housing options for various groups in the population, from the poor to the middle class. This means that low earners must compete with those on middle incomes for affordable housing, leaving the property owners and other so-called gatekeepers of the housing market (housing companies, housing cooperatives, etc.) with a wide range of potential tenants to choose from. Various surveys have shown that people of African descent are likely to be discriminated against in this decision process.[18]

C. Multiple forms of discrimination

45. The Working Group studied the intersectionality of the different forms of discrimination faced by people of African descent and heard experiences of racial discrimination based on ethnicity, religion, socioeconomic status, age and gender identity. Civil society sources reported the competing policies of integration versus assimilation, and struggles faced by people in preserving their cultural identity and freedom of religion and cultural expression.

46. Muslims of African descent are a racial and religious minority in Germany and are facing increasingly difficult times in the enjoyment of their rights, because of increased Islamophobia and Afrophobia. Muslim women of African descent face further discrimination when it comes to access to the labour market. Many Muslim students of African descent describe their experiences in school as traumatic, as they experience not only racism because of their African descent, but also anti-Muslim racism.

V. Conclusions and recommendations

A. Conclusions

47. **As a result of the Second World War, Germany has a heightened awareness of the importance of combating right-wing extremism and racism, particularly against**

[17] This practice is exemplified by the case of a couple of African descent who were denied the right to view an apartment, on the grounds that the apartment could not be rented to people of African descent. See the subsequent court decision: www.justiz.nrw.de/nrwe/olgs/koeln/j2010/24_U_51_09urteil20100119.html.

[18] See www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Wohnungsmarkt_20150615.pdf?__blob=publicationFile.

previously discriminated groups such as Jews, Roma and Sinti. People of African descent have not been recognized as a significant minority, deserving specific action, within the German population. With the philosophy of equal opportunity for all, there have been no specific programmes for people of African descent as a particular victim group.

49. The Working Group welcomes the efforts by the federal Government and state governments to address racial discrimination faced by people of African descent and the country's large intake of asylum seekers and refugees. In 2015 and 2016 combined, there were more than 1.2 million first-time registered asylum seekers.

50. Awareness of the issue of structural racial discrimination targeting people of African descent has grown, thanks to a vocal civil society. The launch of the International Decade for People of African Descent in Germany and the coalition agreements between states, which recognize people of African descent as a particular victim group, are important steps in the path to recognition. The Working Group welcomes the important work of the German Institute for Human Rights, the federal and state-level anti-discrimination agencies, the National Agency for the Prevention of Torture and the Federal Agency for Civic Education.

51. The Working Group welcomes funding support for civil society organizations, such as the programme of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth entitled "Live Democracy!" and its thematic focus on prevention of racism and empowerment of people of African descent.

52. The Working Group welcomes the adoption of the amendment to section 46 of the Criminal Code requiring that racist motivation be taken into account as a specific aggravating circumstance in sentencing offenders.

53. Despite Germany's promotion of multiculturalism and diversity, and the positive measures referred to above, the Working Group is deeply concerned about the human rights situation of people of African descent in Germany. While people of African descent are a diverse group, their daily lives are marked by racism, negative stereotypes and structural racism. They are targeted and are victims of racist violence and hate crimes. They fear for their safety and avoid certain places as they believe they will be attacked. They are subjected to racial discrimination by their classmates, teachers and workmates and to structural racism by the Government and criminal justice system. In Germany, negative stereotypes of people of African descent remain commonplace. These stereotypes lead to misguided and misinformed perceptions of people of African descent. Despite the gravity of the situation, they are not officially recognized as a group particularly exposed to racism.

54. The Working Group notes that the Government of Germany has apologized for the genocide of the Ovaherero and Nama peoples and is conducting targeted development projects in Namibia. The Working Group regrets that the Government of Germany has thus far not consulted seriously with the lawful representatives of the minority and indigenous victims of that genocide to discuss reparations.

55. The Working Group welcomes the initiative by the district authority of Berlin-Mitte and a selected jury composed of a majority of people of African descent, who are currently working on the extensive renaming of streets in the federal capital connected with German colonialism.

56. People of African descent remain structurally invisible. As long as a person is discriminated against, whatever the reason, a State is not free from structural racism. Official statistics are only available for foreign-born people or those with parents born abroad and for African refugees and migrants. People of African descent are collectively grouped under the all-embracing concept of "people from a migrant background", thereby rendering invisible German citizens of African descent beyond the second generation. This approach does not specifically address the challenges faced by people of African descent in Germany, and indeed reflects the general lack of attention paid to their socioeconomic and political welfare.

58. Despite the wealth of data relating to socioeconomic indicators, there is a serious lack of race-based data and research that could inform policy to improve the situation of people of African descent. The Federal Statistical Office has recently enlarged its microcensus to include indicators such as the language(s) spoken in a household. However, the lack of disaggregated data on people of African descent without a migrant background obscures the magnitude of structural and institutional racism that they face.

59. Civil society sources have stated that research in African studies by German academics could, and should, play an eminent role in the analysis of the causal chains that seem to perpetuate racism and racial discrimination towards people of African descent and in highlighting the deficiencies of strategies for containing these social ills that have proved to be ineffective in the past. The situation of people of African descent is currently treated in the context of postcolonial studies, which aim to identify the colonial roots of the persisting discrimination and unbalanced power relations, for example as manifested in language, but not to improve these relations.

60. The Working Group noted that a 10-point plan on returns was being discussed by the Government. The Working Group is concerned that it includes swift deportations for anyone deemed a security risk, increased use of data-sharing for "security reasons" (including medical data) and access to social media accounts and/or mobile telephones as necessary measures to mitigate against potential security risks.

61. The Working Group is also concerned about possible deportations of people of African descent to Libya, given the reports of serious human rights violations in that country, targeting Africans from other countries. In the current scenario of elections scheduled for 2017 and the rise of far-right political parties, the Government informed the Working Group that it was committed to an organized refugee process, while maintaining a political balance between protection of the rights of asylum seekers and refugees and acceptance by the host population.

62. The following recommendations are intended to assist Germany in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

63. Germany should recall its role in the history of colonization, enslavement, exploitation and genocide of Africans, and should make reparations to address the continued impact of those acts. The Herero and Nama people must be included in the negotiations currently ongoing between the Governments of Germany and Namibia. The Working Group emphasizes that the history of racism in Europe should also be understood through an analysis of the events preceding the Second World War, taking into account the correct sequence of historical events.

64. Data should be disaggregated on the basis of ethnic origin and other grounds in order to identify discrimination and gaps so they can be addressed. Modalities for the collection of data on discrimination and equal treatment should be developed in consultation with people of African descent and other groups requiring protection. To this end, a nationwide mandatory disaggregated data collection policy should be implemented, based on ethnic background, national origin and other identities, in order to determine whether, and where, racial disparities exist for people of African descent and address them effectively.

65. The Government of Germany should commission and publish a study on the human rights situation of people of African descent, prepared by people of African descent, based on data gathered on a voluntary basis of self-identification.

66. The Government should fund African organizations working for people of African descent in all states of Germany, so that they can document the human rights

situation of people of African descent in the country and provide necessary services to their community, including funding for Afro-German youth organizations.

65. **The Government should take measures to protect whistle-blowers within institutions, so they can speak up about incidents of racial discrimination and violations of the law without fear.**

66. **People of African descent in Germany should be legally recognized by the Government as a minority group that has made and continues to make profound economic, political, social and cultural contributions to Germany.**

67. **The Working Group recommends the use of the term "Afrophobia" to describe the unique and specific form of racial discrimination affecting people of African descent and the African diaspora.**

68. **In consultation with people of African descent, the Government should find ways to create memorials to honour people of African descent and African victims of historic tragedies. Street names that are insulting to people of African descent should be replaced with names that honour people of African descent.**

69. **Germany should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

70. **The Working Group recommends that the Government adopt measures to respect the rights of people of African descent in accordance with article 1 of the Basic Law, harmonize German laws with the International Convention on the Elimination of All Forms of Racial Discrimination, formulate a definition of racial discrimination in accordance with article 1 of that Convention and review and amend all laws and regulations that lead to de facto racial discrimination, such as the Federal Police Act.**

71. **The Working Group recommends the expansion of the mandate of the German Institute for Human Rights to include the reception of complaints of human rights violations committed by agents of the State.**

72. **The Working Group also recommends that domestic legislation to combat racism, racial discrimination, xenophobia and related intolerance take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009.**

73. **The Working Group recommends the creation of a national institution to represent the interests of people of African descent in Germany and research and develop policies to address issues faced by people of African descent.**

74. **The General Equal Treatment Act should be amended to include more broadly within its scope structural racial discrimination committed by the State, as well as that committed by individuals.**

75. **The Working Group recommends that, in the implementation of the National Action Plan against Racism, the Government should focus on eliminating structural racial discrimination in all spheres, including education, politics and institutions of the Government, through legislative reforms, accountability and enforcement of anti-discrimination legislation. The Government should ensure that the National Action Plan includes a specific focus on people of African descent as a group requiring targeted support. The Government should also assess the extent to which the National Action Plan implements the Durban Declaration and Programme of Action at the national level.**

76. **The Working Group calls upon the Government to establish an independent inquiry, with inclusion of the Oury Jalloh Initiative, into the case of Oury Jalloh in order to investigate events that led to Mr. Jalloh's death in custody, identify and prosecute those responsible and investigate those who have harassed and intimidated the human rights defenders seeking justice in this case.**

77. **The Working Group also urges the State to undertake measures to ensure that anyone requiring medical and psychiatric treatment is treated with dignity and provided with appropriate treatment in a medical facility.**

78. **The Working Group calls for an end to criminalization of men of African descent and for effective action against and cessation of any practice of racial profiling by federal and state law enforcement officials. Actions might include:**

(a) **Amending or repealing section 22 (1) of the Federal Police Act and legally prohibiting discriminatory profiling;**

(b) **Establishing independent complaints mechanisms at both the federal and state levels to investigate acts of racial discrimination committed by law enforcement officials;**

(c) **Adopting a comprehensive training strategy and vetting system for application during recruitment and throughout the career of law enforcement officials to ensure that law enforcement tasks are performed without racial profiling or any other methods leading to racial discrimination; prosecutors and judges should receive specialized training in the identification and characterization of racist hate crimes.**

79. **The Government should undertake prompt, thorough and independent investigations into all allegations of racial profiling, hold those responsible accountable and provide effective remedies, including compensation and guarantees of non-repetition. It should also conduct monitoring through periodic external, independent audits of the practices of police services.**

80. **The Working Group echoes the call of the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance for a limitation of the discretionary powers of law enforcement agents in order to reduce the risk of racial and ethnic profiling. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner. Such strategies may include improving the quality and precision of intelligence-gathering and making sure that law enforcement agents use this information in their decision-making, increasing the supervision of law enforcement officers' discretionary decisions, and enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement agents and the ways in which these agents may be held accountable. Similarly, civilian monitors, civil society actors and international organizations should be given the necessary access to monitor effectively the checks and controls in place in the different types of law enforcement agency.**

81. **The Working Group recommends that the Government should increase the representation of people of African descent in law enforcement and correctional services.**

82. **The Government should implement recommendations of the National Agency for the Prevention of Torture at the federal and state levels.**

83. **The Government should adopt an intersectionality framework to analyse and address the multiple forms of discrimination on gender, race, religion and other grounds.**

84. **The Government should undertake a review to ensure that textbooks and other educational materials reflect historical facts accurately as they relate to past tragedies and atrocities.**

85. **The Government should take measures to address racial discrimination in education and prevent children of African descent from being assigned to lower tracks in a tiered education system, thereby preventing the children from acquiring a university education; and ensure that diplomas obtained abroad, particularly outside the European Union, are properly recognized so that the holders of such diplomas may present themselves on the job market on a competitive basis.**

86. **Educators of African descent should be appointed to the commissions of the boards of education that are responsible for the development and design of school curricula and their contents, in each subject and in each state.**

87. **The Government should seek an amendment to the General Equal Treatment Act in order to eliminate the exception granted to property owners which allows them to discriminate in order to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions. While this provision may have been created to promote integration, its broad nature can be detrimental to such efforts by allowing discrimination to occur.**

88. **The Government should ensure that people of African descent are actively recruited to State institutions in order to create a diverse workforce to represent the population of Germany and combat structural racism.**

89. **The Government should provide specific education and training for people of African descent so that they can obtain better job opportunities. The possibility of affirmative action by way of job quotas should also be explored. These opportunities should open up not just the public sector, but also the private sector.**

90. **The Government should consider granting migrants the right to vote in local elections, thus improving the representation of migrant communities in city councils and other municipal bodies.**

91. **German laws must be aligned with international human rights law in order to respect asylum seekers' human rights, including their right to health in all states. The State should ensure that the human rights of migrant workers, including those who are undocumented, are respected, as guaranteed by international human rights law. Pathways must be created to enable undocumented workers to convert their status into that of a documented worker. These pathways should lead to residency and, in due course, to citizenship.**

92. **The German media are encouraged to write positive stories on people of African descent who contribute to contemporary German society.**

93. **The Working Group encourages the Government to undertake impact-oriented activities in the framework of the International Decade for People of African Descent (2015-2024) at the federal and state levels and to bridge the existing gaps between policies and practice, including through the implementation of relevant recommendations for recognition, justice and development of people of African descent in Germany. The International Decade for People of African Descent presents opportunities to showcase achievements in this regard.**